SUPREME COURT, U.S.
Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM

No. ——— 71-925

TERMINAL FREIGHT COOPERATIVE ASSOCIATION

and

TERMINAL FREIGHT HANDLING CO.,

Petitioners,

v.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

and

MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

MOTION TO INTERVENE ON BEHALF OF SEARS, ROEBUCK & CO.

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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Sears, Roebuck & Co. ("Sears") hereby respectfully moves to intervene in this case. Sears and Petitioner Terminal have been identically aggrieved by various actions arising out of the same factual situation. The present case constitutes an effort to obtain the rights afforded charging parties in a proceeding under Section 10(l) of

the National Labor Relations Act that it was presumed the Court below had recognized in *Terminal Freight Handling Co.* v. *Solien*, 444 F.2d 699 (8th Cir., June 18, 1971), *pet. cert. pend.*, No. 71-609 ("Solien II"). Sears has already filed with this Court a motion to intervene in *Solien II* pointing out the similarities of the interests of Sears and Terminal in that case. In addition, Terminal filed on January 10, 1972 a Motion to Defer Ruling in *Solien II* emphasizing the related nature of that case to both the present case and *Sears, Roebuck & Co.* v. *Solien*, —— F.2d ——, 78 LRRM 2700 (8th Cir. No. 3, 1971), *pet. cert. pend.*, No. ——— ("Solien III"). The instant motion supplements these motions by ensuring that the same parties will be before the Court in each of the *Solien* cases.

More specifically, the present motion is founded on the following grounds:

1. The matters at issue in the instant case directly concern Sears as well as Terminal. The National Labor Relations Board consolidated the unfair labor practice charges of Terminal, which gave rise to the 10(l) District Court proceedings which underlies this action, with virtually identical charges that had been filed by Sears. The Board's petition for 10(l) injunctive relief, accordingly, was common to both Sears and Terminal, as was the settlement stipulation the District Court eventually approved and which is here at issue. The same District Court proceeding also formed the basis for Sears' Petition for Certiorari in *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F.2d 124 (8th Cir., 1971), *cert. den.*, No. 1588, O.T. 1971 ("Solien I"). In addition, a consolidated complaint issued in the unfair labor practice proceeding and a consolidated settlement agreement (see *Solien III*) in that case is still in the process of adjudication before the Board. Accordingly, Sears is so situated that, as a practical matter, the disposition of the present action will necessarily affect the

rights of Sears. Sears clearly has a common question of law and fact with the main action.

2. The subject matter of the instant case—the rights of the charging party in a Section 10(l) proceeding—is one which Sears, as well as other parties, have heretofore presented to this Court but which, because of mootness, has not yet been determined. See *Sears, Roebuck & Co.* v. *Local 419, Carpetlayers*, 397 U.S. 655 (1970), and *The Los Angeles Herald Examiner* v. *Kennedy*, 400 U.S. 3 (1970). Because of this continuing and substantial concern in the question here presented, intervention is appropriate to enable Sears to fully present its interests.

3. Granting the instant motion will in no way delay these proceedings, burden the Court or impair any adjudication of the rights of the parties. Sears does not intend to file any brief of its own in support of the present petition but, rather, would merely adopt the position which has already been advanced by Terminal.

4. Issuance of decision by the Court below does not preclude intervention at this time. The policies underlying intervention, as set forth in Rule 24 of the Federal Rules of Civil Procedure, may also be applicable in appellate courts. *United Automobile, Aerospace and Agricultural Implement Workers of America, Local 238* v. *Scofield*, 382 U.S. 205, n.10 (1965). In an appropriate case, such as the instant one, appellate intervention should be allowed. See, e.g., *McKenna* v. *Pan-American Petroleum Corporation*, 303 F.2d 778, 779 (5th Cir. 1962); *Wolpe* v. *Poretsky*, 144 F.2d 505, 507-8 (1st Cir. 1944); and Moore, Federal Practice (2d Ed.), Sec. 24.13. This Court recognized this principle in *NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967), where, on motion, intervention was granted to a party who had not participated in the proceedings before the Court of Appeals. Order of Court, dated May 2, 1966 in No. 52, O.T. 1966.

5. Counsel for Terminal has informed the undersigned he has no objection to the granting of this Motion.

WHEREFORE, Sears prays that it be permitted to intervene in this case.

Respectfully submitted,

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